



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 11, 2002

Mr. Gordon Bowman  
Assistant County Attorney  
Travis County  
P. O. Box 1748  
Austin, Texas 78767

OR2002-7053

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173549.

The Travis County Human Resources Management Department (the "department") received a written request for the following categories of information: 1) the contract between Travis County and Workers Assistance Program ("WAP") for Travis County's employee assistance Program, 2) the full proposal submitted to Travis County by WAP, and 3) the most recent utilization review report by WAP to Travis County. You state that most of the requested information will be released to the requestor. You contend, however, that portions of WAP's proposal, which, you inform us "was not made a part of the contract with the County when a contract was previously awarded to" WAP, are excepted from required disclosure pursuant to section 552.104 of the Government Code.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The primary purpose of section 552.104 is to protect the government's interests in competitive bidding situations. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. *See* Open Records Decision No. 306 (1982). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982), 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

In this instance, you have indicated that the portions of WAP's proposal that you seek to withhold pertain to a contract that has previously been awarded. You contend, however, that because a similar competitive bidding situation is currently pending, the release of the submitted information at this time "might well compromise the negotiation and evaluation process by giving advantage to the competitive position of other proposers." You have not demonstrated, however, that WAP is a current competitor for the new contract. We therefore conclude that the department may not withhold the submitted information pursuant to section 552.104.

You have also requested a decision from this office pursuant to section 552.305 of the Government Code, which allows governmental bodies to rely on third parties having a privacy or property interest in the information to submit their own arguments as to why the requested information should be withheld from the public. In accordance with section 552.305(d), the department was required to notify WAP of the records request and of its right to submit arguments to this office as to why portions of its proposal should not be released to the public. See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B).

This office did not receive a response from WAP indicating that it wished to have any portion of its proposal withheld from the public. This office therefore has no basis for concluding that WAP has a privacy or property interest in this information. Consequently, the department must release the submitted information to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/RWP/lmt

Ref: ID# 173549

Enc: Submitted documents

c: Ms. Susan Engi  
Deer Oaks EAP Services  
7272 Wurzbach Road, Suite 601  
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(w/o enclosure)

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